

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH BONGIOVANNI,
PETER GERACE, JR.,

Defendants.

NOTICE OF MOTION

Case No. 19-CR-227

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of Joseph M. LaTona, Esq., duly sworn to on the 13th day of July, 2021, and upon the indictment and all other proceedings previously had herein, the undersigned will move this Court, at a term to be held in the United States Courthouse, Buffalo, New York, on a date and time to be determined by the Court, for orders granting the following relief:

- (1) Reconsideration of the Magistrate/Judge's order of June 29, 2021;
- (2) Such other and further relief as the Court deems proper.

DATED: July 13, 2021
Buffalo, New York

Respectfully submitted,

/s/ Joseph M. LaTona
JOSEPH M. LaTONA

Office and Post Office Address
403 Main Street - Suite 716
Buffalo, New York 14203
716-842-0416
sandyw@tomburton.com

JOEL L. DANIELS, ESQ.
Office and Post Office Address
42 Delaware Avenue - Suite 700
Buffalo, New York 14202
(716) 856-5140
jdaniels38@aol.com

Attorneys for Defendant,
PETER GERACE, JR.

TO: JAMES P. KENNEDY, JR., ESQ.
United States Attorney for the
Western District of New York
138 Delaware Avenue
Buffalo, New York 14202
Attn: JOSEPH M. TRIPI, ESQ.
BRENDAN T. CULLINANE, ESQ.
Assistant United States Attorneys

UNITED STATES DISTRICT COURT
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AFFIDAVIT

Case No. 19-CR-227

STATE OF NEW YORK)
COUNTY OF ERIE) ss:
CITY OF BUFFALO)

JOSEPH M. LaTONA, being duly sworn, deposes and says:

1. I have been retained to work with Joel Daniels, Esq. with regard to pre-trial matters.

2. This affidavit is submitted in support of the defense motion for reconsideration of the Magistrate/Judge's order of June 29, 2021. That order denied Mr. Gerace's motion for disclosure of several search warrant applications.

3. Specifically, Mr. Gerace moved to unseal search warrant applications issued on November 29, 2019 and February 26, 2021 concerning his residence and his business premises, Pharaoh's Gentlemen's Club, at 999 Aero Drive in Cheektowaga [Doc. 139, pp. 36-37].

4. The prosecution opposed the Gerace disclosure motion [Doc. 123].

5. The matter proceeded to oral argument on June 29, 2021. At the conclusion of the oral argument, the Magistrate/Judge issued his decision.

6. In denying the defense disclosure motion, the Magistrate/Judge stated that the Court could conduct an *in camera* review which would reveal any "insufficient or lack of probable cause in the federal search warrants" [Doc. 139, p. 38].

7. More importantly, the Magistrate/Judge stated that:

"... there is no evidence before the Court that suggests that the warrants were based on deliberately or recklessly false or misleading information" [Id.].

8. On June 29, 2021 the defense was provided with a redacted application to search Mr. Gerace's cell phone. The cell phone had been seized from Mr. Gerace upon his arrest in Florida on February 28, 2021 [Doc. 139, p. 37].

9. Attached to this motion are excerpts from Mr. Gerace's omnibus motion and legal memorandum seeking suppression. The motion is based upon counsel's review of the redacted search warrant application [Exhibit A]. The suppression motion seeks a hearing pursuant to Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674 (1978).

10. As pointed out in the attached excerpts, Agent Curtis Ryan was the affiant on the cell phone search warrant application as well as on the earlier search warrant applications.

11. The redacted search warrant application reveals numerous Franks violations unquestionably designed to mislead the issuing Magistrate.

12. The defense contends that the affiant on all of the pertinent search warrant applications is inherently untrustworthy. Consequently, the defense requests that the Magistrate/Judge reconsider his earlier denial of the defense motion for access to the search warrant applications.

13. In that regard, the Magistrate/Judge's attention is also invited to the Supreme Court's observation that a grossly negligent "disregard for Fourth Amendment rights" is

cognizable under the Franks rule. Davis v. United States, 564 U.S. 229, 238, 131 S.Ct. 2419, 2427 (2011).

WHEREFORE, deponent respectfully requests that this Court grant the relief sought in the annexed Notice of Motion, together with such other and further relief as the Court deems proper.

/s/ Joseph M. LaTona
JOSEPH M. LaTONA

Sworn to before me this
13th day of July, 2021.

/s/ Sandra Lee Wright

Notary Public

SANDRA LEE WRIGHT
Notary Public, State of New York
Qualified in Erie County
My Commission Expires October 29, 2022

CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2021 I electronically filed the preceding document with the Clerk of the District Court using the CM/ECF system, which sent notification of such filing to the following:

**Joseph M. Tripi, Esq.
Brendan T. Cullinane, Esq.
Assistant United States Attorneys**

Defense Counsel

I further hereby certify that I have mailed by United States Postal Service said document to the following non-CM/ECF participants:

None

/s/ Sandra Lee Wright
SANDRA LEE WRIGHT